

(Purpose: To ensure that \$5,000,000 is available for a study to assess the feasibility and advisability of using service dogs for the treatment or rehabilitation of veterans with physical or mental injuries or disabilities)

On page 52, after line 21, add the following:
SEC. 229. Of the amounts appropriated or otherwise made available by this title for the Department of Veterans Affairs, \$5,000,000 shall be available for the study required by section 1077 of the National Defense Authorization Act for Fiscal Year 2010.

Mr. FRANKEN. Mr. President, the amendment I offer today would fund a vital new initiative within the Department of Veteran Affairs that was authorized by the recent National Defense Authorization Act. This initiative is a VA program and study for the provision of service dogs to disabled veterans, which began as an amendment I offered to the Defense authorization bill and is now a provision in the enacted law.

This 3-year program will study the benefit of using service dogs to help treat veterans with physical and mental injuries and disabilities. It is meant to provide the VA with one more tool to raise the quality of life for those who have given so much to our Nation.

Under this program, the VA will partner with nonprofit organizations that provide service dogs free of charge to veterans. The government will offset some of the costs of providing the dogs, which are currently funded largely through private donations. This will allow roughly 200 veterans to be paired with dogs and to participate in the study. In this way, the program will amount to a public-private partnership where donors to those nonprofits will know their money will go further, thanks to public matching funds.

The veterans who participate in the study will be veterans with physical disabilities and with mental disabilities such as PTSD. It was one such veteran, CPT Luis Montalvan, who initially sparked my interest in this effort. I met Luis, who had been injured while serving in Anbar in Iraq, along with his service dog Tuesday, at an inaugural event. Luis explained to me that he could not have been there if it weren't for Tuesday who eases his PTSD in numerous and very impressive ways.

After meeting Luis, I undertook research and learned about all of the benefits that service dogs can provide individuals with disabilities. I saw the wonderful work of the nonprofits which give their time and the donors who give their money to undertake the intensive training and the provision of these dogs. I learned there were more veterans out there who feel they could benefit from such a service dog if they had access to one.

I introduced my legislation shortly after coming to office. The VA program it establishes will study—scientifically—the benefits to veterans of the service dogs, so we are proceeding based on evidence. The VA will also provide funds to veterans who partici-

pate in the study to cover some of the costs of maintaining their service dogs.

Today I am offering this amendment to the Military Construction and Department of Veterans Affairs appropriations legislation so the fully authorized VA initiative may now be fully funded. The amendment is straightforward and reasonable. My amendment today would simply make \$5 million available for this study that passed by unanimous consent. In this way, we can both provide more service dogs to the veterans who want them, and we can study the benefits they can provide to those veterans and the most effective ways to provide those benefits.

Our Nation owes a profound debt to those who have served in the military. For those veterans with disabilities, we need to make sure the VA has as many effective tools for raising their quality of life as possible. My amendment would make sure that one of those tools is funded.

I urge my colleagues to support this amendment.

I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PROVIDING FOR A CONDITIONAL ADJOURNMENT/RECESS OF THE HOUSE AND SENATE

Mr. JOHNSON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 210, the adjournment resolution, received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (H. Con. Res. 210) providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. JOHNSON. Mr. President, I ask unanimous consent that the concurrent resolution be agreed to and the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 210) was agreed to, as follows:

H. CON. RES. 210

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on any legislative day from Friday, November 6, 2009, through Tuesday, Novem-

ber 10, 2009, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Monday, November 16, 2009, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns on any day from Friday, November 6, 2009, through Tuesday, November 10, 2009, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, November 16, 2009, or such other time on that day as may be specified in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate if, in their opinion, the public interest shall warrant it.

Mr. JOHNSON. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. INOUE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MILITARY CONSTRUCTION, VETERANS AFFAIRS AND RELATED AGENCIES APPROPRIATIONS ACT, 2010—Continued

Mr. INOUE. Mr. President, I ask unanimous consent that the pending amendment be set aside so I may say a few words.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. INOUE. Mr. President, let me begin, first, by thanking Chairman JOHNSON and Senator HUTCHISON for their fine work in preparing this measure before us. Similar to the other appropriations bills for fiscal year 2010, this bill, which provides the necessary funding for military construction and veterans programs, was prepared by the subcommittee on a bipartisan basis.

I am very pleased to advise my colleagues in the Senate that the committee endorsed the bill unanimously and forwarded this matter to the Senate for consideration.

As my colleagues are aware, we are already more than 1 month into the new fiscal year, and we simply need to complete our work on this measure.

Moreover, Wednesday is Veterans Day. It would truly send the right message to our veterans for the Senate to pass this bill before November 11.

Again, I wish to commend the chairman and Senator HUTCHISON for their fine work on this measure and urge its adoption.

AMENDMENT NO. 2754

Mr. President, I rise to discuss amendment No. 2754, which has been cosponsored by Senators JOHNSON and COCHRAN, to reallocate unobligated fiscal year 2009 military construction funding to support President Obama's new European missile defense plan. The funding was appropriated in last year's appropriations bill for the European missile defense sites but can no longer be spent.

This amendment will enable the Missile Defense Agency to meet the President's timelines for defending Europe and the United States sooner against Iranian missiles.

I strongly endorse the President's European missile defense plan. This new approach will enhance the protection of our allies in Europe, U.S. forces and their families deployed abroad, and the U.S. homeland from ballistic missile attack sooner than the previous program.

It is more robust and responsive to the increasingly pervasive short- and medium-range missile threats and is adaptable to longer range threats in the future. The new architecture focuses on using the proven standard missile-3 on Aegis ships and on land, together with additional sensor capability to provide more effective protection for ourselves and our allies.

In order to meet the timelines set out by the President to deploy a capability in Europe in the 2015 timeframe, General O'Reilly, Director of the Missile Defense Agency, has requested the Congress to reprogram \$68.5 million to construct an Aegis ashore test facility at the Pacific Missile Range Facility in Hawaii. This amendment responds to that request.

I ask unanimous consent to have printed in the RECORD the letter from General O'Reilly requesting this transfer of funds.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF DEFENSE,
MISSILE DEFENSE AGENCY,
Washington, DC, October 7, 2009.

Hon. DANIEL INOUE,
Chairman, Committee on Appropriations,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to request your support for reauthorization and reappropriation of \$68.5 million of unobligated FY2009 MILCON funds, previously appropriated for deployment of missile defense capabilities in Europe, to support near-term requirements for the President's new Phased Adaptive Approach for missile defense in Europe.

Our top priority is the establishment of an Aegis Ashore test facility which could also provide an operational ballistic missile defense capability when needed. Due to its strategic location and multi-dimensional testing capabilities, the Pacific Missile Range Facility (PMRF) in Hawaii has been selected as the proposed site for this test facility, and placement of a test launcher at this site could also provide continuous protection for this region. Our goal is to complete this project in time to support the first flight test of the land-based Standard-Missile 3 interceptor in FY2012, which would re-

quire construction funding to be available for obligation in FY2010.

Your support to make these FY2009 MILCON funds available for the Aegis Ashore test facility is essential if we are to implement the President's new Phased Adaptive Approach in time to counter the growing ballistic missile threat. I am prepared to provide you with any additional information you may require.

Thank you for consideration of this request and your steadfast support for the defense of our Nation.

Sincerely,

PATRICK J. O'REILLY,
Lieutenant General, USA Director.

Mr. INOUE. Mr. President, in the letter the general says that establishing this test facility is his top priority for the President's new plan for missile defense in Europe. He goes on to state:

Our goal is to complete this project in time to support the first flight test of the land-based standard-missile 3 interceptor in FY 2012, which would require construction funding to be available for obligation in FY 2010.

I offer this amendment with some reservation. It is critical to getting missile defense to Europe sooner, but it circumvents the normal order of business in the Senate under ordinary circumstances. This project should have been authorized in the fiscal year 2010 National Defense Authorization Act and then appropriated in the Military Construction bill. I take that process seriously and wish to explain to my colleagues the special circumstances under which I offer this amendment.

President Obama publicly announced his European missile defense strategy on September 17 of this year. This announcement came well after the House and Senate Armed Services Committees began the conference negotiation process.

In order to implement the President's new plan, General O'Reilly made the request to Congress for an AEGIS ashore test facility on October 7, the same day that the House and Senate completed the conference agreement on the Defense authorization bill. Due to conflicts in timing, the conferees were not able to consider this late request from the administration. Thus, an amendment on the fiscal year 2010 Military Construction appropriations bill is the best path to get the facility started in order to meet the administration's timelines. If there was a better way to proceed, I would do so. Unfortunately, these unusual circumstances have put us in this situation.

The fiscal year 2010 National Defense Authorization Act provided flexibility for the Missile Defense Agency to spend over \$240 million of research and development funding in fiscal years 2009 and 2010 to purchase equipment associated with the AEGIS ashore test facility and begin the development of the new European ballistic missile defense architecture. The military construction funding is needed at this time in conjunction with the research and development funding to begin implementation of the European missile defense plan.

Let me also make clear that this amendment is not asking for additional money. This funding is presently available. The Missile Defense Agency has over \$150 million in fiscal year 2009 unobligated funds that were appropriated for the missile defense sites in the Czech Republic and Poland that are no longer needed. This amendment would use a portion of those funds to begin construction of the AEGIS ashore test facility in fiscal year 2010.

Lastly, let me comment on the site chosen for the AEGIS ashore test facility. According to the Missile Defense Agency, the Pacific Missile Range Facility on the island of Kauai has been the center of excellence for AEGIS ballistic missile defense testing for the last 12 years and will continue in that regard for the next decade. Indeed, just 2 weeks ago, the Pacific Missile Range Facility hosted the successful intercept test of the Japanese AEGIS ballistic missile defense program. To date, the Pacific Missile Range has supported 20 AEGIS tests. In addition, PMRF also has a proud track record of testing the Missile Defense Agency's Theater High Altitude Area Defense System, with five tests at the range since 2007.

The Pacific Missile Range Facility is the world's largest instrumented missile testing and training range. The Department of Defense and the Missile Defense Agency, in particular, utilize this range due to its relative isolation and ideal year-round climate and encroachment-free environment. Furthermore, it is the only range in the world where submarines, surface ships, aircraft, and space vehicles can operate and be tracked simultaneously. For these reasons, the Missile Defense Agency believes the Pacific Missile Range Facility is the ideal location to support AEGIS ashore testing.

I urge my colleagues to support this amendment. If this test facility does not get started in fiscal year 2010, the Missile Defense Agency will not be able to meet the flight test scheduled to demonstrate AEGIS ashore capability prior to the administration's proposed 2015 deployment date to Europe. It is a very important amendment.

AMENDMENT NO. 2754 TO AMENDMENT NO. 2730

Madam President, I now call up amendment No. 2754 and ask for its consideration.

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Hawaii [Mr. INOUE], for himself, Mr. COCHRAN, and Mr. JOHNSON, proposes an amendment numbered 2754 to amendment No. 2730.

Mr. INOUE. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To permit \$68,500,000, as requested by the Missile Defense Agency of the Department of Defense, to be used for the construction of a test facility to support the Phased Adaptive Approach for missile defense in Europe, with an offset)

On page 27, between lines 3 and 4, insert the following:

SEC. 128. (a)(1) The amount appropriated or otherwise made available by this title under the heading "MILITARY CONSTRUCTION, DEFENSE-WIDE" is hereby increased by \$68,500,000, with the amount of such increase to remain available until September 30, 2014.

(2) Of the amount appropriated or otherwise made available by this title under the heading "MILITARY CONSTRUCTION, DEFENSE-WIDE", as increased by paragraph (1), \$68,500,000 shall be available for the construction of an Aegis Ashore Test Facility at the Pacific Missile Range Facility, Hawaii. Notwithstanding any other provision of law, such funds may be obligated and expended to carry out planning and design and construction not otherwise authorized by law.

(b) Of the amount appropriated or otherwise made available by title I of the Military Construction and Veterans Affairs Appropriations Act, 2009 (division E of Public Law 110-329; 122 Stat. 3692) under the heading "MILITARY CONSTRUCTION, DEFENSE-WIDE" and available for the purpose of European Ballistic Missile Defense program construction, \$69,500,000 is hereby rescinded.

Mr. INOUE. I suggest the absence of a quorum.

The PRESIDING OFFICER. Will the Senator withhold the request for a quorum call?

Mr. INOUE. I set aside my request.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Madam President, I ask unanimous consent to, No. 1, offer an amendment, which I will do in 3 or 4 minutes, and then spend 3 or 4 minutes on that amendment and then ask unanimous consent for 15 minutes to talk on the Executive Calendar as well as speak in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2757 TO AMENDMENT NO. 2730

Mr. COBURN. Madam President, I ask that the pending amendment be set aside and that amendment No. 2757 be called up.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Oklahoma [Mr. COBURN] proposes an amendment numbered 2757 to amendment No. 2730.

Mr. COBURN. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require public disclosure of certain reports)

At the appropriate place, insert the following:

SEC. _____. (a) Notwithstanding any other provision of this Act and except as provided in subsection (b), any report required to be submitted by a Federal agency or department to the Committee on Appropriations of either the Senate or the House of Representatives in this Act shall be posted on the public website of that agency upon receipt by the committee.

(b) Subsection (a) shall not apply to a report if—

(1) the public posting of the report compromises national security; or

(2) the report contains proprietary information.

Mr. COBURN. Madam President, this is a very straightforward amendment. This is an amendment I have offered on all appropriations bills to date. We passed it on Housing and Urban Development-Transportation. We passed it on Energy and Water. We passed it on Interior. We passed it on the Defense appropriations bill. It is an amendment that says that the reports that are asked for in this appropriations bill, unless there is reason to not yield to the people of this country the information contained in that report for either national security or defense purposes, that those studies will be made available to the American citizens and the rest of the Senate.

Each appropriations bill, in proper fashion and by a good job by the Appropriations Committee, asks for reports and reviews on how the money is spent. All this amendment does is require that the reports that are required to be submitted by a Federal agency in this act be posted on a public Web site of that agency for all Members of Congress and all Americans to see. There is an exception for reports that contain classified or proprietary information.

In the House and Senate version of this bill, the following reports are—I won't go through all of them—what action DOD and the State Department have taken to encourage host countries to assume a greater share of the defense burden—that is something that ought to be shared with the American people; an annual report on operation and maintenance expenditures for each individual general or flag officer quarters at each of our bases around the country during the prior year; a report of the Secretary of Veterans Affairs on approved major construction projects for which funds are not obligated within the timeframe provided for in the act—in other words, to know what we are getting ready to spend, what is obligated; a report detailing the current planned use of property estimated to have greater than \$1 million in annual rental costs; a detailed report on how the \$3 billion that has already been appropriated for information technology projects at the Veterans Administration is spent, including operations and maintenance costs, salaries, and expenses by individual project; and then finally, a quarterly report on the financial status of the Veterans' Administration, a health status.

This is just plain, good, open government. It creates transparency, and it allows the American people to hold us to account. By requiring that Federal agencies produce reports funded in this bill and publicize them on a Web site, everybody will have easy access to the reports. That is not the case today in the Senate or in the Congress. Evaluating and reading these reports may

prompt a congressional hearing, Federal legislation, or even termination of a Federal program or policy.

This is a straightforward amendment. It is my hope our colleagues will accept this amendment and it will become part of this appropriations bill as well.

NOMINATION OF JUDGE ANDRE DAVIS

Madam President, I now wish to spend a few moments talking about Judge Andre Davis, who is the nominee for the Fourth Circuit Court of Appeals.

I sit on the Judiciary Committee, and I voted against Judge Davis's nomination coming out of the Judiciary Committee. I thought the American people ought to know why.

He is definitely an individual of integrity. He is a very pleasant individual. I enjoyed the banter back and forth during the hearing. But as a Federal district judge, Judge Davis has been reversed by the Fourth Circuit Court numerous times. A lot of judges get reversed, but there is a trend with Judge Davis where we have seen the law misapplied. So I have some real concerns. This is a lifetime appointment to this circuit court, No. 1. No. 2, the Supreme Court only hears 80 cases a year, so if a case comes to a circuit court, most often that is a final determination.

Let me spend a little bit of time on characteristics of these reversals because they are very concerning to me. He has been reversed by the Fourth Circuit Court in six different cases where he was noted to suppress evidence. For those of you like me who are not lawyers, let me explain what that means.

Suppressing evidence in a criminal case most often results in a defendant not being convicted of a crime and a victim and their family not receiving justice. Not only do the victim and victim's family not get justice but the government has to spend taxpayer dollars and resources to appeal the case to the next level. Let me give some examples.

In the case of *U.S. v. Kimbrough*, Judge Davis suppressed the statement of a defendant who, while in the presence of police, told his mother he had a gun in the room. The officer was trying to give him his Miranda warnings at the time when the mother asked him if there was anything else in the basement, besides the cocaine that was readily visible to her and the officer.

In reversing Judge Davis's decision, the Fourth Circuit offered a harsh rebuke stating that since the mother "is a private citizen, her spontaneous questioning of [the defendant] alone, independent of the police officers, could never implicate the Fifth Amendment." The court further stated that Judge Davis's conclusion that "'Miss Kimbrough's involvement in questioning her son was the equivalent of official custodial interrogation,' . . . is at best incomplete and, taken literally, is simply erroneous." The Fourth Circuit said that a statement made in

these circumstances should “never” be suppressed and Judge Davis’s reasoning was “simply erroneous.”

In *U.S. v. Siegel*, Judge Davis suppressed evidence of the defendant’s 20-year history of scheming and plotting to take money from previous husbands in a case where the defendant was accused of dating the victim, taking his money, and then killing him. The facts of this case are particularly worrisome.

The defendant had met the victim and started dating him, eventually taking his money and trying to have him institutionalized. After failing at having him institutionalized, she killed the victim and hid his body. Although the body was found in 1996, it was not identified until 2003. During that time, the defendant remarried and continued to collect the man’s Social Security checks. When the body was identified, Federal agents contacted her and she told them the victim was alive and had run off with some other woman. She was arrested and charged with murdering the victim to prevent him from reporting her fraud. When the prosecution sought to introduce the defendant’s prior bad acts at trial, Judge Davis refused. According to the Fourth Circuit, Judge Davis was concerned about the length of the trial. The Fourth Circuit reversed, finding that the evidence was admissible and, because the government charged the defendant with committing murder to prevent being reported for fraud, this evidence was an essential element of the government’s case. As for Judge Davis’s concern about a lengthy trial, the Fourth Circuit concluded that was an improper basis for excluding whole-sale this clearly probative and relevant evidence of other crimes. On remand, the defendant was found guilty.

In the case of *U.S. v. Jamison*, Judge Davis suppressed the confession of a felon who shot himself, called out to police for help, and then gave the confession during the routine police investigation into his injury. He was charged with being a felon in possession of a firearm. The court of appeals reversed Judge Davis’s ruling and said the man’s confession was admissible in the case.

In *U.S. v. Custis*, the defendant was prosecuted for several Federal drug and firearm offenses. The evidence used against him included weapons and drugs that were seized by the police from his truck and residence. The police search was based on a warrant obtained with evidence they compiled from an informant who had given them reliable data on the defendant’s drug operation. Judge Davis granted the defendant’s suppression motion, finding that the search warrant was faulty. The Fourth Circuit reversed, stating that Judge Davis erred in granting the defendant’s motion to suppress the evidence, and that if Judge Davis had read the supporting affidavit in a “common-sense, rather than hypertechnical manner, as he was required to do,” he would not have excluded the evidence.

There are many other cases where Judge Davis has incorrectly suppressed evidence that I will not go into at this time. There are many other reasons, whether it be violating the sentencing levels according to the Fourth Circuit, an abuse of discretion, remanding for resentencing, or being more than a neutral arbiter in terms of plea arrangements. Here is what the Fourth Circuit said about Judge Davis’s role in terms of the plea arrangements:

We have not found a single case in which the extent of judicial involvement in plea negotiations equaled that in the case at hand. The district court repeatedly appeared to be an advocate for the pleas rather than as a neutral arbiter, and any fair reading of the record reveals the substantial risk of coerced guilty pleas. We can only conclude that the district court’s role as advocate for the defendant’s guilty pleas affected the fairness, integrity, and public reputation of judicial proceedings.

I won’t go on, but those six cases I outlined are enough for me to not be able to support this judge, who is obviously a very fine gentleman and a good man, but who I believe has made some significant inexcusable errors on the bench.

Finally, I want to spend a moment talking about a bill several of my colleagues have brought up, and it is the veterans caregivers omnibus bill. Regardless of what the news reports say, and my colleagues say, I am not opposed to us making sure we keep each and every commitment we make to veterans. I think many of the programs that are in this bill are ideally suited for the problems our veterans have. What I object to is the fact we are going to create \$3.7 billion worth of spending—and that is a CBO score, not my score, the \$3.7 billion worth of spending—over the next 5 years and not make any effort whatsoever to eliminate programs that don’t have anywhere near the priority this program does.

The other thing I object to is the timing. There is no question we need to do this, especially for our wounded warriors. But we are excluding our Vietnam veterans from having access to this same care, and we are excluding the first gulf war veterans from having the same access. They have the same needs. Nobody can deny they don’t have some of the same needs, but we are excluding them, and from a constitutional standpoint, I am not sure we can ever get to the point where we would agree that is fair treatment for our veterans.

Mr. DURBIN. Will the Senator yield for a question?

Mr. COBURN. I wish to finish my statement first. I listened to the Senator’s statement earlier today on the floor, so let me finish my statement.

The other thing that is concerning is we have a bill before us right now—this appropriations bill—that has no money for this in it, one, and authorizations aren’t required. So \$280 billion of the money we appropriate every year is not authorized. The fact there is no money

in this bill for this program tells me something, that the urgency of getting a press release isn’t near the urgency of the needs of our veterans. Because if we allow the normal process to happen, it will be 18 months from now before any money comes forward for this bill.

Finally, we have offered up a list of programs we think have much lower priority than our veterans’ health care, and so I think of my brother, who is a veteran, and I ask myself: What did he serve for? What did he fight for? Did he fight so we could come back here and undermine the future by not making the same tough choices that are required for every family and, more importantly, not demonstrate the courage in our service that the veterans demonstrate in their service—which is putting yourself at risk to do what is best for our country? That is what they do, but we ought to be doing the same thing.

We ran a very large deficit this last year. Forty-three cents of every dollar we spent this last year was borrowed. None of the people in this room will ever pay a penny toward that debt. It will be our children and grandchildren. And the fact is we will not make the hard choices to pay for this so that tomorrow we can say, we are going to eliminate these programs so this program can go forward, and we are going to take the money that is going for these programs so this program can go forward.

What this appropriations bill does, as a matter of fact, is ask for a study from the Veterans’ Administration on the need of this bill. So if this bill is certainly a priority, the funding for it should have been in this appropriations bill, and it is not. Nobody can deny it is not. So I come to the question: When will enough be enough? When will we stop playing a game on dollars and ultimately make the same hard choices and demonstrate the courage our veterans have demonstrated? I can’t think of many veterans who want now what is paid on the backs of their children or grandchildren. What they want to see us do is the hard work, as they do the hard work, to put ourselves at risk by telling some people no so we can tell veterans yes. What we are doing today is we are going to tell veterans yes but we are going to tell our children no.

I can easily outline for my colleagues \$300 billion—that is “B” for billion—of waste, fraud, and duplication in the Federal budget. They may disagree with some of that, but there is no question you could get a consensus on \$3.7 billion of that. On 1 percent of it, you could get a consensus. But there is no effort made on this authorization bill to create priorities. What we hear all the time is: Well, that is not the way it works up here. Authorization bills are simply that, and it has to go through the appropriations, and you are not spending any money.

Well, if we are not spending any money on this bill, then we are not solving the problems for our veterans.

And if we don't have any money for this program in this appropriations bill, we are holding out a hollow promise.

I ask my colleagues to work with us. Let's offset the price for this, demonstrate the same courage and the same level of commitment. There has been no secret on who has said we should not pass this by unanimous consent, and there has never been a time that we refused to talk to anybody about that.

My hope is the American people are listening. Sure, we do want to do the right things for our veterans, but there has to come a time when we are forced to make hard choices, and we are not seeing that. We are not seeing that in this bill, and we are not seeing it in the authorization for this veterans and caregivers omnibus bill.

With that, I yield to my colleague from Illinois, and retain the time until he has finished asking whatever question he may have.

Mr. DURBIN. I thank the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I ask the Senator from Oklahoma, is the Senator suggesting we should open this up to caregivers for veterans of all wars?

Mr. COBURN. Yes, sir.

Mr. DURBIN. Would the Senator from Oklahoma join me in that endeavor?

Mr. COBURN. If we are going to do this bill, yes, I would.

Mr. DURBIN. Would the Senator from Oklahoma also agree that this bill was on the calendar long before Veterans Day?

Mr. COBURN. Absolutely, but when was the hold? Less than 3 weeks ago. It wasn't brought to the floor before then.

Mr. DURBIN. It was brought to the floor on September 25.

Mr. COBURN. Okay, 5 weeks. Pardon me.

Mr. DURBIN. Also, I would ask the Senator if he is suggesting we should have included the appropriations for this bill before we authorized it?

Mr. COBURN. I would answer my colleague that we do that 280 billion times a year.

Mr. DURBIN. The Senator would endorse that, and wants us to include the appropriations before we set up authorizing language?

Mr. COBURN. What I would tell my colleague is you do it routinely on the appropriations bill. So why is this any different?

My question to my colleague is: If in fact this is so important to get done today, knowing there is no money in this bill for this—my colleague would agree with that, would he not, that there is no money in this appropriations bill for this act? Is that a correct statement?

Mr. DURBIN. To my knowledge, there is not.

Mr. COBURN. There is not. So we are going to say we are going to authorize

something in the hopes that we have to do it right now, knowing that unless we have an omnibus or a supplemental this won't actually happen until we get to this bill again next year.

Mr. DURBIN. So is the Senator from Oklahoma conceding an authorizing bill does not spend money, since the passage of this authorizing bill, as you said, would not spend a penny?

Mr. COBURN. No, I will not concede that. Because what it does is it causes us—and I enjoy debating my colleague from Illinois. Here is my point on authorizing bills. We can authorize and authorize and authorize, and when we do, we are telling veterans they are going to get this. That is what we are telling them. We are communicating to every veterans organization and we are telling them we are going to do this. So if we are going to tell them we are going to do it, we ought to put in process the way to do it. And if we are saying it has to happen right now, then where is the money? Show me the money to make it happen right now.

The fact is—and I will reclaim my time—we play games, and the game we are playing is that we can authorize and send out a press release but then we are not held accountable to do what we have authorized. There are a lot of good key components in this bill. My objection is twofold: One, it discriminates against previous veterans, which I think is uncalled for; and two, we don't eliminate any of the waste in terms of authorizations so that we more focus the Appropriations Committee.

There is no question the Appropriations Committee has the power to fund money anywhere they want and they do it whether the bills are authorized or not authorized. I will be glad to give the Senator from Illinois a list of the \$280 billion we spend every year that is not authorized. It is a spurious argument to state that we should not have fiscal accountability when we authorize programs. We should have and we ought to make the tough choices. The problem is, we do not do any oversight, to speak of, to cause us to know the programs that are not working that we could eliminate so we will not have duplicate funding and so we will not spend it.

The question veterans ask me is what is our priority with our money. The first priority has to be defending the country. The second priority ought to be about taking care of veterans. What we do is we have \$300 billion a year in waste, fraud, and duplication on things that do not do either of those and that are extremely wasteful. Nobody with common sense would say they ought to continue. Yet we continue down the process.

I have taken more than my time and I know my colleagues are going to vote. I would tell my colleague from Illinois we have had this debate a large number of times. We have a frank disagreement about the fiscal discipline that should be required of us as Sen-

ators. The fact is, we are going to authorize a bill and we are not going to make any tough choices about anything else and we are not going to take away any options from the Appropriations Committee when it comes to funding. To me, that abrogates our responsibility to be good authorizers. I will stand by that conviction as long as I am in the Senate. We had that debate on the bridge to nowhere, which my colleague supported, which was in an authorizing bill—and multiple times.

With that, I yield the floor and I am prepared to listen to my colleague from Illinois.

Mr. DURBIN. Madam President, I know we have a standing order for a trigger to move to the Executive Calendar, but I ask unanimous consent for 5 minutes for the purpose of making a unanimous consent request, a short statement, and then to ask two other amendments which I have introduced to this bill be called and be pending.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DURBIN. Madam President, I will speak briefly to the Senator from Oklahoma. This is not my bill. This was a bill introduced by Senator Hillary Clinton. It has been around for a long time. It is an effort to provide some help to the 6,800 families who have in their homes today a disabled veteran who needs a caregiver, someone who helps that veteran change the dressings on their wounds, provides an IV change if necessary, injections if necessary, move them from bed to chair and back again. For many of our veterans, that is their lifeline. It is a wife who is giving her life to her husband who has returned injured from a war. It is a mother, a father, a son, a daughter, a loved one in the family. These people are as much a part of our veterans medical system as the great people who serve us at the veterans hospitals and veterans centers across America.

What Senator Clinton wanted to do and what I want to help her do is provide some help for these caregivers. Many of them are giving their lives to this veteran. It is not too much to ask that we help them with a small stipend each month, with training so they know how to do the things that are necessary so they can provide the medical help these veterans need, with 2 weeks of respite so they can have a little time off by themselves and have someone else, such as a visiting nurse, step in for the veteran during that period of time.

We reported the bill out of the Veterans' Committee and brought it to the floor. By custom in the Senate, regardless of what you just heard, we first pass a bill authorizing a program and, if it is passed, we appropriate money to the program. I am trying to follow that regular order.

The Senator from Oklahoma has objected. He is the only person objecting. Because of his objection 6,800 veterans, those who served Iraq and Afghanistan,

are unable to get this additional care. I know we cannot give it to every caregiver. I know it will be limited, and we will have to make that decision as part of our deliberation as to what we can do. But to say we should do nothing for these people is to make a mockery of this Veterans Day. If we truly care for these veterans, let us care for these families who are giving their lives to help them.

I hope the Senator from Oklahoma will lift the hold on this bill, give us a chance to debate it, offer his amendments. That is what we are here for. But to merely stand and say: No, stop, I will not allow it, I don't think is what the Senate should be about. Let us debate his point of view, my point of view, other points of view, and try to reach some conclusion.

AMENDMENT NO. 2759 TO AMENDMENT NO. 2730

I ask that the clerk call up my pending amendment No. 2759.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 2759.

The amendment is as follows:

(Purpose: To enhance the ability of the Department of Veterans Affairs to recruit and retain health care administrators and providers in underserved rural areas)

On page 52, after line 21, add the following: SEC. 229. (a)(1)(A) Of the amount made available by this title for the Veterans Health Administration under the heading "MEDICAL SERVICES", \$1,500,000 shall be available to allow the Secretary of Veterans Affairs to offer incentives to qualified health care providers working in underserved rural areas designated by the Veterans Health Administration, in addition to amounts otherwise available for other pay and incentives.

(B) Health care providers shall be eligible for incentives pursuant to this paragraph only for the period of time that they serve in designated areas.

(2)(A) Of the amount made available by this title for the Veterans Health Administration under the heading "MEDICAL SUPPORT AND COMPLIANCE", \$1,500,000 shall be available to allow the Secretary of Veterans Affairs to offer incentives to qualified health care administrators working in underserved rural areas designated by the Veterans Health Administration, in addition to amounts otherwise available for other pay and incentives.

(B) Health care administrators shall be eligible for incentives pursuant to this paragraph only for the period of time that they serve in designated areas.

(b) Not later than March 31, 2010, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs and Appropriations of the Senate and the House of Representatives a report detailing the number of new employees receiving incentives under the pilot program established pursuant to this section, describing the potential for retaining those employees, and explaining the structure of the program.

AMENDMENT NO. 2760 TO AMENDMENT NO. 2730

Mr. DURBIN. Mr. President, I ask unanimous consent that the amendment be set aside and the clerk call up amendment No. 2760.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Illinois [Mr. DURBIN] proposes an amendment numbered 2760 to amendment No. 2730.

The amendment is as follows:

(Purpose: To designate the North Chicago Veterans Affairs Medical Center, Illinois, as the "Captain James A. Lovell Federal Health Care Center")

At the end of title II, add the following:

SEC. 229. (a) NAMING OF HEALTH CARE CENTER.—Effective October 1, 2010, the North Chicago Veterans Affairs Medical Center located in Lake County, Illinois, shall be known and designated as the "Captain James A. Lovell Federal Health Care Center".

(b) REFERENCES.—Any reference to the medical center referred to in subsection (a) in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the Captain James A. Lovell Federal Health Care Center.

Mr. COBURN. Madam Presiding, during today's conversation, the Senator from Illinois stated that S. 1963 had been on the Senate calendar since September 25, 2009. In fact, S. 1963 was read the second time and placed on the calendar on October 29, 2009. A request was not made for unanimous consent to pass the bill on the minority side until Friday, November 6, 2009.

There are currently 35,000 veterans receiving aid and attendance benefits from the Department of Veterans Affairs, which provides funding for veterans who need extra help at home but do not need institutional care. The aid and attendance program assists all disabled veterans of all wars. Out of this population, around 2,000 veterans received their injuries after September 11 and would qualify for extra caregiver assistance in this bill. However, caregivers for tens of thousands of veterans of prior wars would not. Of course, that assumes that the House passes the Caregiver Assistance Act in its Chamber and the President signs it into law. Then it assumes that next year, in the discussion on the fiscal year 2011 budget, the President requests funding for caregiver assistance, or that both appropriations committees include funding, and that the President signs this into law. The absolute earliest that a caregiver would receive assistance is October 1, 2010. However, that date is not likely given the performance of the Department of Veterans Affairs. Right now, the average processing of a disability claim is 162 days at the Department. Given that the Department will have to make rules on this new benefit, it will be well into 2011 before any caregiver benefits from this program. However, passing this bill before Veterans Day will give benefits to politicians, who will have made an empty promise in 2009 that might not be realized until 2011, and even then, would be paid for by our children and grandchildren.

EXECUTIVE SESSION

NOMINATION OF ANDRE M. DAVIS TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Andre M. Davis, of Maryland, to be United States Circuit Judge for the Fourth Circuit.

The PRESIDING OFFICER. Under the previous order, there will be 60 minutes of debate, equally divided and controlled between the Senator from Vermont, Mr. LEAHY, and the Senator from Alabama, Mr. SESSIONS, or their designees.

The Senator from Maryland is recognized.

Ms. MIKULSKI. Madam President, I am a little confused about the order. Parliamentary inquiry of the pending business: Are we now considering the nomination of Andre Davis?

The PRESIDING OFFICER. The Senator is correct.

Ms. MIKULSKI. Madam President, as the senior Senator from Maryland, I have been designated as the Democratic representative. Of course, I note on the floor the distinguished ranking member, Senator SESSIONS. I was going to lead off, if that does meet with the Senator's approval.

Mr. SESSIONS. Yes, I say to the Senator from Maryland, I think that would be quite appropriate and fine with me.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Madam President, this is an exciting day for me. It is an exciting day because I am here to present a distinguished jurist from Maryland to be nominated to sit on the Fourth Circuit Court of Appeals.

Judge Davis is from my hometown of Baltimore. He has been nominated to sit on the Fourth Circuit Court of Appeals. He comes before the Senate for a vote on his confirmation. His nomination has been approved by the Judiciary Committee, and I thank both the chairman of the Judiciary Committee, Senator LEAHY, and the ranking member, Senator SESSIONS, for moving this nomination through the committee process and the majority and minority leaders for bringing this nomination to the floor.

For 8 years as the Senator from Maryland, I have pressed for a qualified Marylander to fill the Maryland vacancy on the Fourth Circuit Court of Appeals. I have worked with my colleague, Senator Sarbanes, and now Senator CARDIN. This seat was once held by the late Judge Francis Murnaghan, a true legal giant, with deep roots of civic engagement as well as a record of extraordinary judicial competence. Today, we are presenting a nominee who is worthy to fill this seat.